Intelligence Operations

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Purpose

- To provide an overview of DoD intelligence oversight and Privacy Act laws and policies regarding US person information and intelligence activities, in relation to domestic support operations; and provide an overview of the applicability of Intelligence Oversight to National Guard personnel in Title 10, Title 32, and State AD status.

AGENDA

- Introduction
- Purpose
- References
- Background
- Intelligence v. Law Enforcement
- Collecting on U.S. Persons – DON'T!
- Intel Oversight Applicable to the NG
- DAIG Inspection proc
- Conclusion
- Questions

References

1 of 2

DOD INTELLIGENCE COMMUNITY OVERSIGHT:

- ***National Security Act of 1947***, **Title 50, United States Code, Section 401, *et. seq.***
- ***The Privacy Act***, **Title 5, United States Code, Appendix 552a**
- **Executive Order 12333, 4 Dec 81, *United States Intelligence Activities***
- **DoD Directive 5240.1, 25 Apr 88, *DoD Intelligence Activities***
- **DoD Regulation 5240.1-R, 7 Dec 82, *Procedures Governing the Activities of DoD Intelligence Components***
- **DoD Directive 5240.2, *DoD Counterintelligence (CI)***
- **DoD Instruction 5240.10, *DoD Counterintelligence Support to Unified and Specified Commands***
- **AR 381-10, *US Army Intelligence Activities***
- **AR 381-20, *The Army Counterintelligence Program***
- **AFI 14-104**

DOD NON-INTELLIGENCE COMMUNITY OVERSIGHT

- ***The PrIvacy Act, Title 5, United States Code, Appendix 552a***
- **DoD Directive 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense***
- ***See also AR 525-13 (ATFP)***

References

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5240.1, DoD Intelligence Activities

- **Basic Definitions and Division of Labor for DoD Intelligence Activities**

5240.1-R, Activities of DoD Intelligence Components that Affect United States Persons

- **Nuts and Bolts of DoD Handling of US Persons Information**
- **Consistent with and subordinate to EO 12333**
- **Applies to Intelligence Components…**
- **But not Law Enforcement activities**
- **Domestic Activities: "Activities w/in the US that do not involve a significant connection with a foreign power, organization, or person."—Procedure 2, Paragraph B.3**

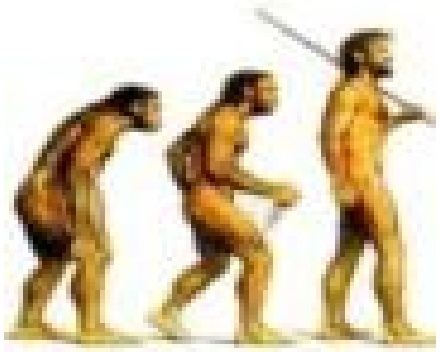
Background
1 of 7

ABUSES - 60s/70s

- VIETNAM ERA ABUSES
- INFILTRATION OF COLLEGE CAMPUSES
- INVOLVEMENT IN DOMESTIC POLITICAL ISSUES
- SURVEILLANCE OF ANTI-WAR PROTESTORS

ABUSES - 80/90'S

- COMPARTMENTED PROGRAM ABUSES
- YELLOW FRUIT
- IRAN-CONTRA; GUATEMALA



IO MISSION

1975 – Church Committee

1981 – E.O. 12333

1982 – DODR 5240.1R

1984 – AR 381-10

1985 – IOD Established

1986 – AR 20-1

1995 – DCS-G2/TIG MOA

2003 – DCS-G2/TIG MOA

2005 – AR 381-10 (revised)

Background
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Intelligence Oversight is a collection of policies and procedures designed to regulate and control the activity of intelligence functions and organizations:

- **Assassinations, human experimentation, domestic spying FBI, CIA, military, and NSA collection against militant groups, extremists, peace groups, campus protestors**

To protect the *constitutional rights* and privacy of US Persons while allowing Intelligence Components to protect the

Background

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A US Person is:

When in doubt - U.S. Citizen

A United States citizen

A person known to be a permanent resident alien (Green Card holder)

Groups substantially composed of US Persons

Corporations incorporated in the United States, except if directed or controlled by a foreign government

Background

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Intelligence Community Oversight applies to:

- **All intelligence community organizations and personnel**

- **Limits collection, retention, and dissemination of information on US persons to specific exceptions related to foreign intelligence, international terrorist activities, or international narcotics activities**

- **Collection Techniques: Electronic surveillance, concealed monitoring, etc.**

- **Other: Contracting, <u>assistance to law</u>**

Background

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Privacy Act applies to ALL DoD Organizations and Personnel
DoD Non-Intelligence Component Guidance Under DoDD 5200.27

- **Collection, retention, and dissemination of information on US Persons, generally not allowed without permission of the US person, or related to law enforcement investigation**

- **FBI is lead agency for collection of information on US persons in CONUS, DoD personnel may collect only under limited circumstances with prior approval of FBI**

- **DoD may only collect US Person domestic threat information which indicates a direct threat to DoD persons, property, or facilities**

- **DoD may only keep information which identifies a US person**

Background
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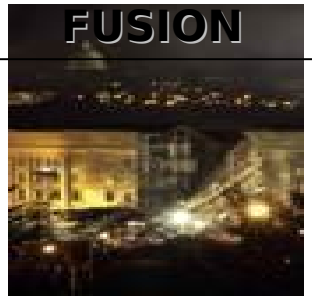
Relevance in the Current Environment

GWOT AND TRANSFORMATION	FORCE PROTECTION	EVOLVING CAPABILITIES
PRE-DEPLOYMENT TRAINING & COMMAND RESPONSIBILITIES	INFORMATION SHARING & INTELLIGENCE FUSION	OPEN SOURCE COLLECTION



PROTECT ARMY INTERESTS

PROTECT CONSTITUTIONAL RIGHTS

Background

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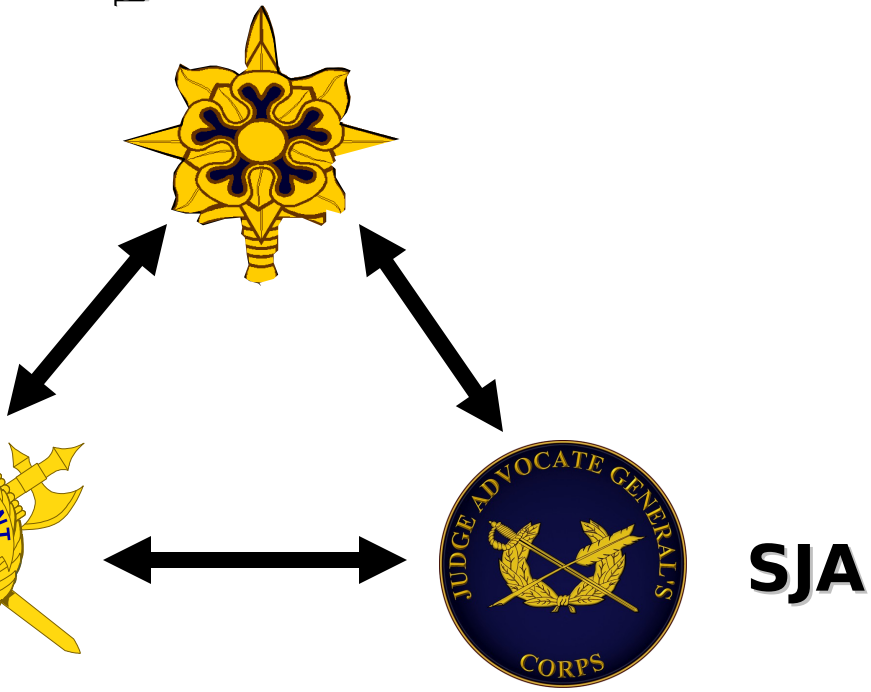
Intelligence Oversight Triangle

Commanders Remain Responsible for Everything the Unit Does or Fails to Do

Intelligence Professional



IG **SJA**

A system of checks and balances to mitigate risk

Intelligence v. Law Enforcement

- Intelligence Community mission directed at foreign threats to national security
- Posse Comitatus: Restricts the military from enforcing domestic laws – *But NG?*
- Purely domestic threats to national security (such as "militia groups") are law enforcement matters, and the responsibility of FBI and other law enforcement agencies
- Intelligence oversight regulations do not apply to law enforcement activities, but the Privacy Act does
- Specific prohibition on collecting information on US persons based solely upon activities constituting the exercise of their 1st Amendment Rights

Collecting on U.S. Persons

Limitations on Intelligence Community (IC) DoD Component Mission

1 - National Security Act of 1947, as amended, and EO 12333, define the roles and missions of the IC and, only authorize IC components to collect foreign intelligence and counterintelligence. EO 12333 also sets intelligence oversight restrictions on collection, retention, and dissemination of information on US persons by the IC.

2 - DoD 5240.1 implements EO 12333, delineates who are the DOD IC components, and defines what intelligence activities are authorized by those DOD IC components.

DoD IC Collecting on U.S. Persons

- **DoDD 5240-1 Applicable Definitions**

  <u>Intelligence Activities</u>: The collection, production, and dissemination of foreign intelligence and counterintelligence by DoD intelligence components authorized under EO 12333.

  <u>Foreign Intelligence</u>: Information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

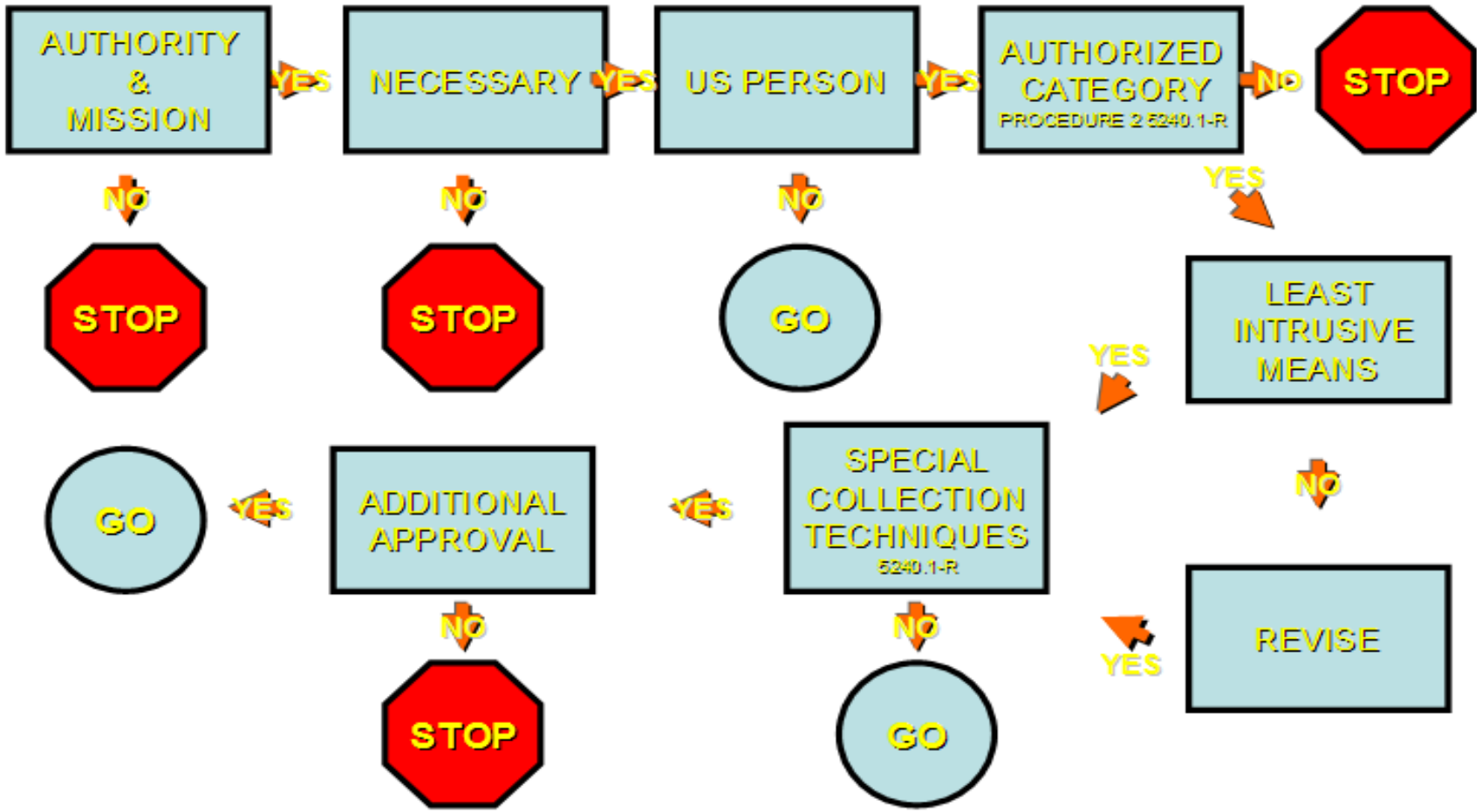
  <u>Counterintelligence</u>: Information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or international terrorist activities, but not including personnel, physical, document, or communications security programs.

DoD IC Collecting on U.S. Persons

- **DoD 5240-1-R, *Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons,* implements DoDD 5240.1**
- **DoD 5240.1-R requires a two step test before information on US persons can be collected by a DoD IC Component:**
- **1. It is necessary to carry out an "assigned function" (<u>foreign intelligence or counterintelligence</u> + <u>specific unit mission</u>) of the collecting component, and;**
- **2. It falls under one of the following categories:**
  - **Obtained with consent**
  - **Publicly available**
  - **Foreign intelligence**
  - **Counterintelligence**
  - **Potential sources or agents**
  - **Protection of sources or methods**
  - **Direct threat to Physical security of DoD persons or installations**
  - **Personnel security**
  - **Communications security**
  - **International narcotics**
  - **To protect the safety of any person including from international terrorist organizations**
  - **Overhead reconnaissance not targeted at specific US person/organization**
  - **Administrative purposes**

DoD IC Collecting on U.S. Persons

THE PROCESS



Intel Oversight Applicable to NG

- **Title 10 Status:**
  - **Member of the DoD IC Community**
  - **EO 12333, DoDD 5240.1, and DoD 5240.1 Fully Applicable**

- **Title 32 Status:**
  - **Not a Member of the DoD IC Community although Performing a Federal Mission**
  - **EO 12333, DoDD 5240.1, and DoD 5240.1 restrictions made fully applicable through service regulations for Air Guard and Army National Guard (AR 381-10, US Army Intelligence Activities, 1 July 1984; AFI 14-104, Oversight of Intelligence Activities, 1 July 2000; and AFI 14-119, Intelligence Support to Force Protection (FP), 6 January 2004)**

- **State AD Status:**
  - **Not a Member of the DoD IC Community**
  - **Individual State promulgated regulations will control collection, retention, and dissemination of information on US persons by Intel and Non-Intel NG components**

Intel Oversight Applicable to NG

- **General Counsels (Staff Judge Advocate)**
  - **Responsible for receiving reports of questionable intelligence activities**
  - **Providing legal guidance to intelligence components regarding collection, retention and dissemination of US person information**
- **Inspectors General**
  - **Responsible for inspections of intelligence components**
  - **Receive reports of and investigate questionable intelligence activities**

DAIG's IO INSPECTION METHODOLOGY

GETTING STARTED!

Do I need help?

What Can They Do?

Approving authority?

What are they doing?

Who Are They?

Why do they talk funny?

What are the governing policies and regulations?

Why did they laugh at my clearance?

They are so sneaky...What are they hiding?

INTELLIGENCE OVERSIGHT
Getting Started with Your Units

- **Do your homework & <u>read</u> the regulation**

- **Identify subordinate MI activities**

- **Get your Staff Judge Advocate involved**

- **Inspect as part of the OIP**
  - ✓ **Training program in place**
  - ✓ **Understanding of appropriate**

INSPECTION FOCUS

- Unit IO Program
  - training, IOO, infusion, inspection, etc.
- Mission/Functions/Authorities
  - Legitimate mission and legitimate au
- Questionable Intelligence Activities
  - Possible violations of law, order or policy
- Systemic Issues in MI Community

PREPARATION

- ID and locate all intelligence organizations!
- Determine MI units' chain of command!
- Do they have a separate MACOM with an IG?
- Mission, Functions, Authorities?
- Study all applicable IO policies!
- Review past IO inspection reports!
- Review past reports of questionable activities!
- SME and/or SJA support?
- DAIG advice and assistance?

EXECUTION

- **Office call with the Command or SIO**
- **Briefing Exchange**
- **IO Program Review (The Book)**
- **Probe (Walk-thru and Talk-thru)**
  - **Explore mission execution & support processes**
  - **File Diving (operational and administrative)**
  - **Sensing Sessions &/or Interviews**
- **Exit-Brief**

GOOD INTELLIGENCE OVERSIGHT PROGRAM INDICATORS_

- **COMMAND AND LEADER EMPHASIS**
- **CODIFIED RESPONSIBILITIES AND REQUIREMENTS**
- **FORMALLY DESIGNATED IO OFFICIAL (Whom Everyone Knows)**
- **TRAINING – EARLY AND OFTEN – WITH CREATIVE REINFORCEMENT**

GOOD INTELLIGENCE OVERSIGHT PROGRAM INDICATORS

- **ACTIVE PART OF ALL OPERATIONAL PLANNING AND EXECUTION**
- **ACTIVE SJA INVOLVEMENT**
- **QUESTIONABLE ACTIVITY REPORTING**
  - **Timeliness**
  - **Prompt and Appropriate Corrective Action**
  - **Legal Review**
- **ACCURATE / CURRENT RECORDS & FILES**

Trends – What We Are Seeing

- **Inspections**
  - Execution of Intelligence Activities Remains Generally Good
  - Troops Get Trained—Leaders and Contractors Don't
  - Unimaginative Training Leads to Poor Retention
  - Lack of Non-MI Leader Awareness and Emphasis on IO
  - Non-MI Commanders Unprepared for Training / Employment of MI Units
  - Inadequate Pre-Deployment Training in MI Skills

- **Reports of Questionable Intelligence Activity (Procedure 15)**
  - Conduct of Intelligence Activities by Untrained Personnel
  - Conduct of Intelligence Activities without Appropriate Authority
  - Personnel Misconduct in the Course of Intelligence Operations

Example DAIG Case Files

Source Operations

- Unauthorized or Unapproved Maneuver Commander Taskings
- The Rogue Analyst
- The Rogue G2
- CERP Funds for Sources

Unauthorized Collection Activities

- Bugging the Barbershop
- "Health and Welfare" (Wink - Wink) Subterfuge Searches
- Hacking into Email Accounts of US Persons
- Physical Surveillance and Investigations
- Tracking Anti-War Demonstration & Other Domestic Groups

Other Employee Conduct Violations

- "The Instructor '*Looked*' Like a Terrorist"
- The "Snuff Job"

Conclusion

Understand the **operational parameters** within which intelligence legally operates – ***Law enforcement info stays within Law enforcement channels***

Ensure that **legal advisors and IGs are aware of these parameters**

- Ensure that senior leadership, TAG, Chief of Staff etc understand these parameters and that tasking intelligence to **operate outside of these boundaries is …**

- The fact that **no National Guard assets at any level** (NGB, State or unit level) **are authorized to domestic collection,** and to be tasked to do so …

D**omestic collection by intelligence assets is only authorized to be accomplished by certain specialties, none of which exists or are allowed to practice their trade in Title 32 status,** for example counterintelligence

Certain activities that fall under military intelligence overseas **fall under military law enforcement** within the US, and as such are not an intelligence duty. In other words law enforcement information belongs in the J3 but not the J2.

Intelligence Oversight Requirements:

Limits *collection*, retention, and dissemination of information on *US persons* to specific exceptions related to foreign intelligence, international terrorist

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***FORCE PROTECTION*: INTELLIGENCE COMPONENTS HAVE AN OBLIGATION TO PASS THREAT INFORMATION TO THE ORGANIZATION AND/OR COMMANDER RESPONSIBLE FOR PROTECTING THREATENED PERSONS AND/OR ASSETS AND TO**

Receiving v. Collecting:

RECEIVING: INTELLIGENCE PERSONNEL MAY RECEIVE INFORMATION FROM ANYONE, ANYTIME TO DETERMINE ITS INTELLIGENCE VALUE AND WHETHER IT CAN BE COLLECTED, RETAINED, OR DISSEMINATED

COLLECTING: INFORMATION IS COLLECTED WHEN ACTION IS TAKEN THAT DEMONSTRATESTHE INTENT TO USE OR RETAIN THE INFORMATION FOR INTELLIGENCE PURPOSES

Collection, retention, and dissemination of information on US persons, is generally not allowed without permission of the US person, or related to law enforcement investigation. The FBI is lead agency for collection of information on US persons in CONUS, DoD personnel may collect only under limited circumstances with prior approval of FBI

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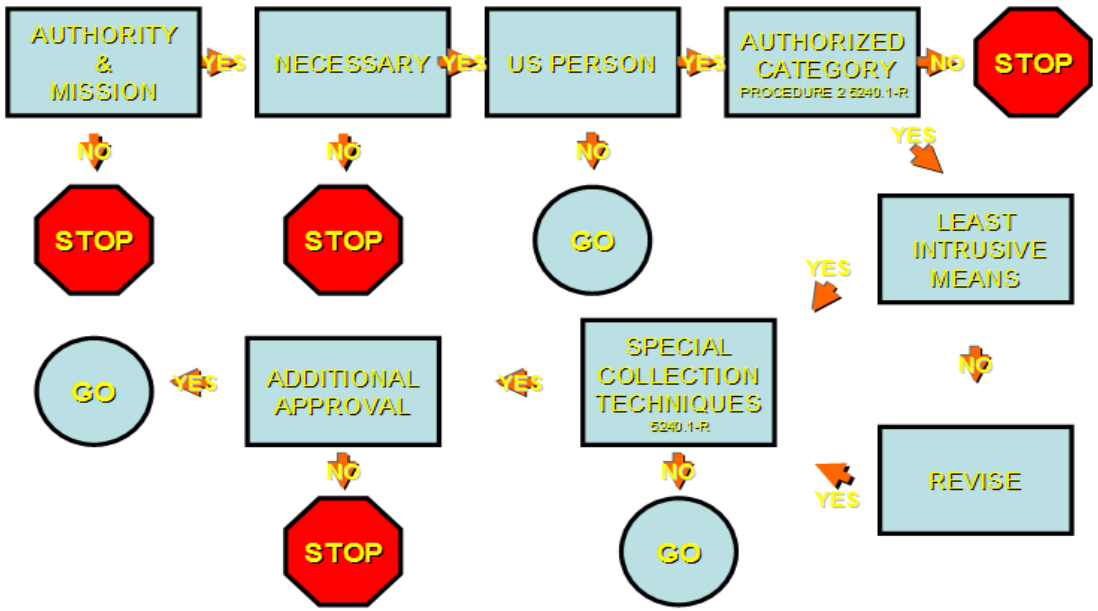

Attributes of a good IO Progra

Effective training
Periodic Refresher training
Documented
Historical Background
Computerized Program
Tailored to unit and mission

Law Enforcement:

Purely domestic threats to national security (such as "militia groups") are law enforcement matters, and the responsibility of FBI and other law enforcement agencies

Questions ???

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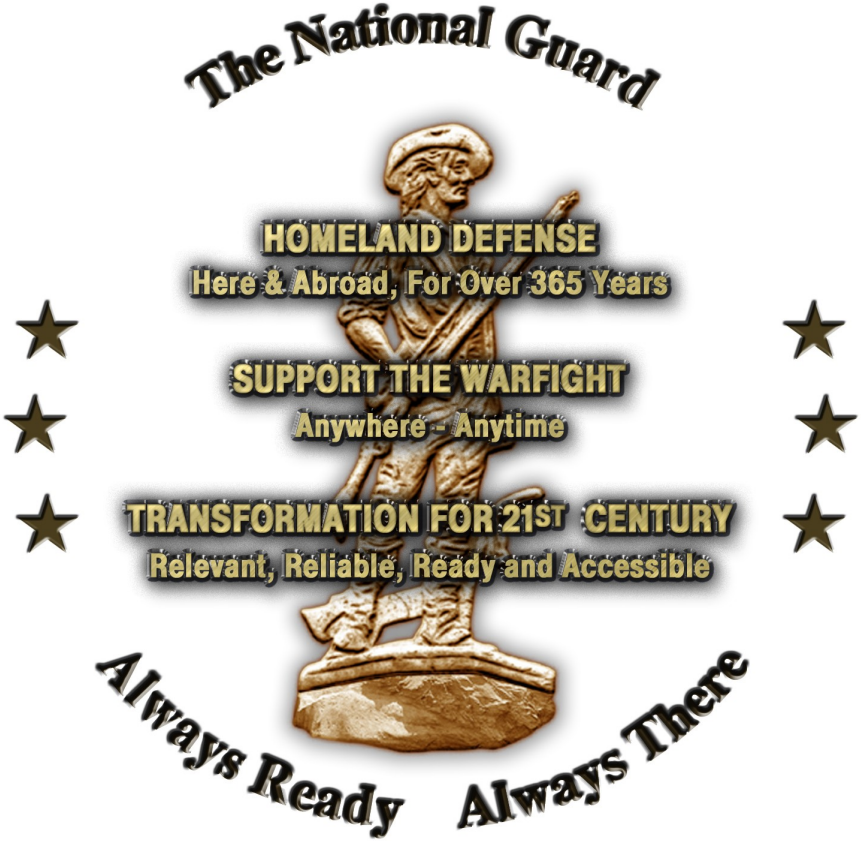
One Last Point On Reporting Questionable Intelligence Activities

Torie Clarke, former Asst. SECDEF for Public Affairs

"In the information age, the bad news is going to get out…the or question is who will tell it first and will they tell it accurately."


The National Guard
HOMELAND DEFENSE
Here & Abroad, For Over 365 Years
SUPPORT THE WARFIGHT
Anywhere - Anytime
TRANSFORMATION FOR 21ST CENTURY
Relevant, Reliable, Ready and Accessible
Always Ready
Always There

Questions?

… Offering uniquely American solutions to the complex security challenges our nation faces both at home and abroad

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